

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

WRIT PETITION NO. 482 OF 2003

Office Note, Office Memoranda
of Quorum, appearances, Court's
orders or directions and
Registrar's orders.

Court's or Judge's Orders

Shri J. Godinho, advocate for the
petitioners.

Shri S. Karpe, advocate appointed
under Legal Aid Scheme for
respondent no.1.

Shri V. Pangam, advocate appointed
under Legal Aid Scheme for
respondent no.2.

Shri J. A. Lobo, advocate
appointed under Legal Aid Scheme for
respondent no.3 & 4.

CORAM : D. G. KARNIK, J.

DATE : 18th March, 2004

P.C.:

Heard learned counsel for the
petitioners as well as the
respondents. Being an interlocutory
Order, I am not inclined to
interfere in exercise of the
discretionary jurisdiction of this
Court under Article 227 of the
Constitution of India, specially
when the learned District Judge had
held that the respondents/plaintiffs
have an easementary right of
necessity and the access is blocked.

2. The only point that was urged by the learned counsel for the petitioners was that a mandatory injunction for opening the gate should not have been issued, because a mandatory order cannot be passed to restore status quo ante. According to the learned counsel for the petitioners, the suit was filed on 14th May, 1999, while the gate in question was fixed by the petitioners on 12th May, 1999, i.e. two days prior to the filing of the suit. Learned counsel for the respondents dispute this and submit that the gate was fixed on 18th May, 1992, i.e. after service of the summons. As held by the Supreme Court in the case of **Dorab Cawasji Warden vs. Coomi Sorab Warden & Ors.**, reported in AIR 1990 SC 867, the Court is entitled to grant a mandatory injunction and restore status quo ante, specially when in contemplation of the suit the defendants attempted to defeat the plaintiff's claim by fixing a gate.

Hence, I find no merit in the
Writ Petition which is hereby
rejected.

D. G. KARNIK, J.

mc.